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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,110	11/13/2001	Charles Robert Tomsovic	16866	5411

23556 7590 09/02/2003

KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER
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YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/010,110

Applicant(s)

TOMSOVIC ET AL.

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 23-37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-22 is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-22, drawn to a method for positioning side panels **or** making a prefastened and refastenable pant, classified in class 156, subclass 200.
  - II. Claims 23-37, drawn to an apparatus, classified in class 493, subclass 416.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially different apparatus such as using a conveyor means which does not use 1<sup>st</sup> and 2<sup>nd</sup> conveyors for sandwiching discrete folded pants.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Thomas Gage on 07-30-03 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 23-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-2 and 4-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Csida et al (US 6,596,113 B2).

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to claims 1 and 4-5, Csida et al discloses a process of making a prefastened and refastenable pant, the process comprises transporting a folded pant in a machine direction defining a transport plane (figures 2-3, 8-9, 11), the

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foleded pant includes 1<sup>st</sup> side panels (34) having initially inward facing fastening components (82,83) and 2<sup>nd</sup> side panels (134) having initially outward facing fastening components (84,85) (figure 10); inverting the outward facing fastening components (figure 14); transporting the 1<sup>st</sup> side panels "within [an] interior panel positioning station" (emphasis added; paragraph 0068) in a direction substantially perpendicular to the transport plane, wherein the side panels move in a transport path which is angled from the transport plane (figures 13-14, 16-18); and engaging the inward facing fastening components and outward facing components (figure 18); and wherein the interior panel positioning station includes an upper air knife and a lower air knife (284, 290), the lower air knife being oriented parallel to a machine direction and includes a nozzle that extends over "*substantially all of the length dimension.*" (paragraph 0148). The interior panel positioning station is taken to be a fluid flow device because it includes air knives delivering a jet of flowing air.

With respect to claim 2, see figure 14.

***Allowable Subject Matter***

7. Claims 7-22 are allowed.
8. Claims 3 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter:

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a) Claims 3 and 6 are allowable, because (in the context of the claims taken as a whole) none of the references taken teaches *"inserting the side panels in passageways ... from an entry slot"*.

b) Claim 7 is allowable, because (in the context of the claims taken as a whole) there is no suggestion in the art to transfer 1<sup>st</sup> side panels from fluid flow devices to side panel transfer devices, and then transporting the 1<sup>st</sup> side panels on the transfer devices in a z-direction.

c) Claim 13 is allowable, because (in the context of the claims taken as a whole) there is no suggestion in the art to position side panels **within internal** passageways of fluid flow devices.

d) Claim 22 is allowable, because (in the context of the claims taken as a whole) there is no suggestion in the art to position side panels within fluid flow devices, each device including walls defining having an internal passageway, *"an entry slot to the internal passageway disposed toward the machine center line ..."* (emphasis added).

### **Conclusion**


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (703) 308-4788. The examiner can normally be reached on Monday-Friday with second Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W Ball can be reached on (703) 308-2058. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.



Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
08-21-03